

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2009-342-WS- ORDER NO. 2009-\_\_\_\_\_**

NOVEMBER \_\_\_\_, 2009

IN RE: )  
Review of Avondale Mills, Incorporated's ) **FINAL ORDER**  
Rates Approved in Order No. 2009-394 )

**INTRODUCTION**

Avondale Mills, Inc. ("Avondale" or "the Company") is a corporation which provides water distribution and wastewater collection services to 616 water and 495 sewerage customers in the Graniteville and Vacluse area of Aiken County, South Carolina. Avondale filed a petition for approval of a new schedule of rates and charges with the South Carolina Public Service Commission ("Commission") on December 23, 2008. By its application, the Company sought an increase in total annual water and sewer revenues of \$613,060. The Commission established Docket No. 2008-460-WS to consider the Company's request. No petitions to intervene were filed by any parties in this matter; therefore, the Company and the South Carolina Office of Regulatory Staff ("ORS") were the only parties in this Docket.

Pursuant to a request of the ORS, the Commission held a public hearing in Graniteville, South Carolina at 6:00 p.m. on May 26, 2009. Approximately twenty members of the public attended the hearing, and six presented testimony before the Commission regarding their concerns about the new proposed rates and quality of service provided by Avondale. The Commission held the hearing on the merits of Avondale's application in the Commission's hearing room at 101 Executive Center Drive, Columbia South Carolina on June 2, 2009.

On June 18, 2009 the Commission issued Order No. 2009-394 (herein “Order”) in Docket No. 2008-460-WS approving and establishing new rates and charges for Avondale. The Order approved a schedule of rates and charges which provided Avondale with a net increase in operating income of \$567,917; calculated to yield Avondale an authorized Operating Margin of 12.71%. As established through the direct pre-filed testimony and exhibits of ORS witness Christina A. Stutz, Avondale had adjusted total operating revenues of \$110,766 for the test year ending August 29, 2008. The direct testimony and accompanying exhibits of ORS witness Willie J. Morgan further established that the Company’s proposed increase in calculated revenues would be produced in part through an anticipated 443.66% increase in residential water revenues, a 701.35% increase in irrigation water revenues, and a 495.05% increase in residential sewer revenues.

Following the publication of the Order, on August 4, 2009, the Aiken County Legislative Delegation<sup>1</sup> (herein “Delegation”) notified the Commission that the Delegation had received more than 150 complaints from their constituents regarding Avondale’s new rates, which had appeared on Avondale’s customers bills dated July 31, 2009. In its letter the Delegation requested the Commission revise/lower the rates in the Order in light of the socio-economic conditions of the system’s customers. Based on the request of the Delegation the Commission opened Docket No. 2009-342-WS.

Subsequent to the establishment of this docket, Petitions for Intervention were filed by Joe A. Taylor and Michael Hunt, who are both Avondale customers. Additionally, on August 26, 2009, Rep. Tom Young of the Delegation filed a list of 27 Avondale customers who expressed an interest in testifying at the hearing on this matter.

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<sup>1</sup> The Aiken County Legislative Delegation cited in this matter includes State Senator Shane Massey and State Representatives J. Roland Smith and Tom Young, Jr.

The Commission held a public night hearing in this docket on September 30, 2009 in Graniteville. A large audience attended the public hearing, and 22 customers of the system testified regarding, among other things, the effect of the rate increase on their personal finances and water use as well as their concerns regarding insufficient water pressure at points on the system, leaks in the system, and inoperable meters.

On September 1, 2009 Avondale filed a Motion to Dismiss with the Commission alleging that the Delegation lacked standing to bring this action, that Avondale was being denied its right of due process due to a lack of notice regarding the issues in dispute in this docket, and that the Commission lacked the authority to open this docket. A hearing to consider Avondale's Motion to Dismiss was held before the Commission on September 23, 2009. By a directive issued on September 30, 2009 this Commission denied in part Avondale's Motion to Dismiss in finding that the letter of the Delegation had been properly filed with the Commission and that the Commission had the authority to open the docket. The Commission held the Company's due process argument for dismissal in abeyance.

The Commission held the hearing on the merits of this case at the Commission hearing room, located at 101 Executive Center Drive in Columbia, South Carolina on October 6, 2009. In addition to counsel for the Company and ORS, Intervenor Joe Taylor, members of the Delegation and a number of customers of the system were present. Testimony was taken by the Commission from Mr. Taylor (Intervenor), Mr. Wayne Baggett (customer), and Representative Tom Young as well as Mr. Jack Altherr (Vice Chairman, President, CEO and CFO) and Mr. Jimmy Frederick (Manager of Plant Services) for Avondale.

**FINDINGS OF FACT AND SUPPORTING EVIDENCE**

1. The revenue requirement, operating margin, and corresponding rates testified to by Avondale and the ORS Staff in Docket No. 2008-460-WS were properly applied for, reviewed and approved by the Commission in Order No. 2009-394 dated June 18, 2009.

2. The rates set by this Commission in Order 2009-394 were validly adopted and cannot be retroactively repealed or adjusted as the only verified evidence concerning the financial condition of Avondale, its rates, system and business practices is that offered by Avondale and ORS in Docket No. 200-460-WS; all of which support the revenue requirement, operating margin and rates contained in the Commission Order.

3. The Commission does not possess the authority to order Avondale to refund or credit its customers for charges which have been billed under Order No. 2009-394 as any such award for past rates or charges would effectively constitute impermissible retroactive rate-making. South Carolina Elec. And Gas Co. v. Public Serv. Comm'n, 275 S.C. 487, 490, 272 S.E.2d 793, 795 (1980).

4. The Commission, however, is not powerless to rescind, alter, or amend Order No. 2009-394 in any manner in this docket as the Commission is vested with specific powers under S.C. Code Ann. §§58-5-320 and 58-5-270 (Supp. 2008) which are applicable in this case. This authority of the Commission to amend its prior orders and certificates has been found by the courts to be “constructively a part of its orders.” Carolina Pipeline Co. v. South Carolina Pub. Serv. Comm'n, 255 S.C. 324, 334, 178 S.E.2d 669, 674 (1971). Where specifically provided by a statute, the Commission has the power to prospectively correct or reduce a previously approved charge and to modify or amend its own orders after providing notice and an opportunity to be heard. See, Porter v. South Carolina Pub. Serv. Comm'n and AT&T, 327 S.C. 220, 225, 489

S.E.2d 467, 469 (1997) (“This Court has recognized that, pursuant to its authority under §58-9-1200 (1976), the PSC may modify or amend its own orders after notice and an opportunity to be heard.”). Further, “there is no violation of the rule against retroactive rate-making where the reduction sought is *prospective only* as in this case.” Porter v. South Carolina Pub. Serv. Comm’n and Carolina Water Service, Inc., 328 S.C. 222, 234, 493 S.E.2d 92, 99 (1997).

5. We find that S.C. Code Ann. §§58-5-270 and 58-5-320 (Supp. 2008) provide the Commission with very specific authority to “rescind, alter, or amend any order or decision made by it” convincing and supported by both the language of the statutes and relevant case law.

6. We find that the testimony of the public witnesses and Intervenors in this docket provided the Commission with new additional facts and information which were not available prior to our issuance of Order No. 2009-394. These facts were not intentionally concealed, ignored, or discounted by any of the parties or the Commission, but simply had not been provided due to the lack of any Intervenors and the limited public comment received by the Commission. The new facts and evidence which are contained in the record of this docket clearly demonstrate that the rates approved in Order No. 2009-394 have had a dramatic impact on the customers of Avondale and have created personal hardships which mandate the Commission’s use of the powers provided to it by the Legislature under §§58-5-270 and 58-5-320.

7. We find Avondale’s due process argument made in its Motion to Dismiss without merit. Counsel for Avondale clearly demonstrated that the Company was aware of the issues and facts in dispute in this matter both through its presentation of testimony at the hearing and through the arguments which it has presented to this Commission in briefs submitted on October 16, 2009 and October 30, 2009. None of the parties in this proceeding presented facts or

evidence that the rates approved in Order 2009-394 were improperly or imprudently granted. Rather the central issue, as argued by all parties, is whether the Commission should take action to relieve the immediate impact of this over 400% increase in rates on the Company's customers. Avondale was clearly made aware of this issue by the arguments presented to the Commission on September 23, 2009 as well as the public testimony presented to the Commission at the public hearing on September 30, 2009. Extensive testimony was provided by over 20 witnesses at both the public hearing and merits hearing in this docket that the sudden implementation of these rates was both immediate and dramatically in excess of what they had planned for or budgeted. Thus, notice of the issues before the Commission was in fact provided to Avondale. The Commission therefore denies Avondale's remaining grounds for dismissal of this matter.

8. The testimony presented to the Commission from numerous public witnesses and the Intervenor Taylor and Hunt in the present case as well as ORS witness Morgan in Docket 2008-460-WS evidence that Avondale has significant infrastructure problems resulting in water losses which are detrimental to both the company and its customers. Avondale witness Altherr evidenced that Avondale has begun to make expensive and significant improvements in the Avondale system since Order No. 2009-394 was issued. These improvements include new water meters for all of the system's customers, new master meters, new pumps, and plans to reroute one of the system's sewer lines at an estimated cost in excess of \$80,000. Additionally, Altherr testified to the discovery and repair of a substantial system leak which Avondale believes was a significant contributor to its high water loss.

9. We agree with Avondale's contention that there is not sufficient evidence contained in the record of this case or Docket No. 2008-460-WS which would permit the Commission to set rates which differ from those approved in Order No. 2009-394. We do not

agree, however, that such a finding prohibits or renders the Commission powerless to address the substantial and legitimate issues raised in this docket by the system's customers that some form of short term immediate relief should be provided by the Commission to allow these customers to adjust their water usage habits and financial budgets to prepare for the more than 400% increase in their monthly water and sewer bills. Numerous customers have already incurred bills from Avondale which they have been unable to pay in full and this debt will only continue to escalate unless the customers are given a reasonable period in which to adjust to the new rates.

10. We find that *had* the Commission been provided with the testimony and evidence now contained in the record of this case in Docket No. 2008-460-WS, that Order No. 2009-394 would have provided the phase-in of rates now Ordered by this Commission of the rates approved in Order No. 2009-394. Unfortunately, while it was self-evident in the preceding matter that the rate increase sought by the Company, and ultimately approved by this Commission, was substantial, the record was largely devoid of the facts and testimony which the Commission has now been provided with which evidences the severe financial hardship this rate increase has had on the customers of this system. Having been provided with the mechanism to remedy such a situation by the South Carolina Legislature through the language of S.C. Code Ann. §§58-5-270 and 58-5-320, we find that it is within this Commission's authority to provide the interim relief sought by Avondale's ratepayers.

11. As both the Company argues and the Commission stated in its Directive of August 12, 2009, Order No. 2009-394 was validly issued. This fact, however, does not eliminate the actual impact these rates have had on the system's customers. The evidence presented by the public witnesses and Company witness Altherr demonstrated that, once the customers were aware of the impact of the new rates, they began to conserve water and attempt to budget for

much higher water bills. Many also testified that they continue to have difficulties in budgeting for their increased water bills.

### **CONCLUSIONS OF LAW**

1. We conclude the substantial evidence in the record of this case dictates the Commission amend Order No. 2009-394 to provide that Avondale return to charging the rates in effect prior to the Commission's issuance of Order No. 2009-394 for its next billing cycle. Avondale shall then increase its rates on a pro-rated monthly basis for a period of six months until such time as it is again charging the rates approved in Order No. 2009-394. This monthly step-up in rates shall be tied to Avondale providing evidence to ORS that it is making continued progress in upgrading its system and reducing water loss.

2. We further conclude that, although Avondale has made substantial recent investments in its system, the testimony of the public witnesses clearly evidenced that issues remain regarding low or inconsistent water pressure, leaks, inoperable meters and water loss. There is substantial evidence in the record to support the Commission's conclusion that increases in Avondale's rates may properly be tied to verifiable continued improvements in the Avondale system and service to its customers.

3. The testimony of the public witnesses in this docket also provided the Commission with substantial evidence that the customers of the system continue to experience problems with the system's water pressure and meters. Avondale witness Frederick testified that the Company has recently incurred significant costs in installing new meters and pumps and has plans for several future, and even more expensive, improvements in the system. Company witness Altherr additionally testified that, while the company had located and repaired one very significant leak and continues to address the issue of water loss, the system continues to



experience an unacceptably high water loss rate. While the majority of this loss is not charged to customers of the system through rates, the Company was allowed a high 20% water loss rate in Order No. 2009-394, and the high loss rate affects the economic viability of the Company and is indicative of a need for more effective controls and improved infrastructure on the system. Although Avondale witness Altherr testified that the Company intends to use the revenues generated through the new rates to continue its current schedule of improvements, in light of the very substantial increase in rates approved by the Commission in Order No. 2009-394, the Commission has concluded that it is appropriate to Order that the Company's prospective step-up in rates be tied to verified improvements in the systems infrastructure and management.

4. The testimony regarding financial hardship provided by the public witnesses and Intervenors further provides this Commission with the impetus to exercise its discretion to provide Avondale's customers with immediate relief through prospective implementation of the new rates over a period of months to allow these customers a reasonable period of time to both adjust their water usage and financially budget for the increase.

5. The Commission emphasizes that Avondale should not be faulted for either its efforts to obtain rates which it has demonstrated the need for, or for the methods which it employed in implementing the rates approved by the Commission in Docket 2008-460-WS. As stated by this Commission in its Directive of August 12, 2009, Order No. 2009-394 was validly issued, and on the basis of that Order, Avondale implemented the rates which are under review in this docket. In practical application, however, the Commission has concluded that the testimony in this docket clearly evidences a substantial and unanticipated personal hardship on Avondale's customers. This is well evidenced by the water usage and bills of Avondale's customers for the months of July and August 2009 submitted in the record of this case. As shown by this evidence,

when actually notified of the effect of the rate increase, the customers made significant reductions in their water use.

6. This Commission is strictly prohibited from retroactively imposing new rates on Avondale or its customers and is therefore unable to affect rates and charges billed by the Company to its customers for the period since Order No. 2009-394 was issued and the date of this Order. See, Elizabethtown Water Co. v. N. J. Bd. Of Public Utilities, 527 A.2d 354 (N.J. 1987) *citing* South Carolina Elec. And Gas Co. v. Public Serv. Comm'n, 275 S.C. 487, 272 S.E.2d 793 (1980) (prohibition against retroactive ratemaking is intended to protect a utility as well as consumers). We are likewise, and for the same reasons unable to order a refund or any other form of retroactive relief for rates which were approved in Order No. 2009-394 and legitimately charged by Avondale to its customers under that Order.

7. We conclude, however, that this general prohibition on retroactive ratemaking does not limit or prohibit the Commission from adjusting, altering, or amending the rates and conditions approved in Order No. 2009-394 on a prospective basis. Based on the substantial evidence in this docket regarding the economic impact of these new rates on the system's customers, we conclude that Order No. 2009-394 should be amended and that the Commission has the authority to do so. See, Porter v. S. C. Pub. Serv. Comm'n and Carolina Water Service, Inc., 328 S.C. at 234, 493 S.E.2d at 99 (there is no violation of the rule against retroactive rate-making where the relief sought is prospective).

8. This Commission has wide latitude in determining the methodology in rate-setting and there is no abuse of discretion where substantial evidence supports the finding of a just and reasonable rate. Heater of Seabrook, Inc. v. Pub. Serv. Comm'n, 324 S.C. 56, 478 S.E.2d 826 (1996).

9. The Commission has the authority under S.C. Code Ann. §§58-5-270 and 58-5-320 (Supp. 2008) to review the reasonableness of the rates and charges approved in Order No. 2009-394. The Commission has broad authority and discretion under these statutes to “at any time...rescind, alter or amend any order or decision made by it.” In the present case, we conclude that the substantial evidence in the record establishes that the immediate imposition of the rates imposed under Order No. 2009-394 has had a serious and detrimental impact to the customers of the system. We therefore conclude that the best method to avoid or mitigate the severe impact of this rate increase is to reset the rates at their pre-Order No. 2009-394 level and provide for a gradual increase in rates to those approved in that Order. The Commission has the authority, and the record contains the factual evidence necessary to provide for this alteration of Order No. 2009-394. Heater, 332 S.C. 20, 503 S.E.2d 739 (although the Commission is given wide discretion in utility rate cases, that discretion cannot be exercised without substantial evidence to support the finding of a just and reasonable rate).

**IT IS THEREFORE ORDERED THAT:**

1. The rates and schedules approved by the Commission in Order No. 2009-394 are hereby suspended effective with Avondale’s next regular billing cycle.
2. Order No. 2009-394 is hereby amended to provide for a six month phase-in of the rates, charges, and schedules approved by the Commission in that Order.
3. The approved rates and charges shall be implemented at a 1/6<sup>th</sup> of the total increased rate per month until the rates and charges approved in Order No. 2009-394 are fully implemented.

4. Avondale shall provide evidence to ORS on a monthly basis during the six months of the rate phase-in to verify continued improvements in the systems infrastructure, management, and water loss containment efforts. Such report shall be subject to audit and approval by ORS at that Agency's discretion and ORS shall authorize each monthly step-up in rates and provide notice of such approval to the Commission.
5. All charges made by Avondale to customers of the system during the period July 2009 through the next billing cycle after the date of this Order are considered by this Commission to have been validly imposed, charged, and due and payable excluding any specific challenges or allegations regarding improper metering or billing which may be made by customers of the system.
6. All other provisions of Order No. 2009-394 including, but not limited to, the approved operating margin, maintenance of books and records, and implementation of a pass-through mechanism, are affirmed.

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
Elizabeth B. Fleming, Chairman

ATTEST:

\_\_\_\_\_  
John E. Howard, Vice Chairman

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2009-342-WS**

IN RE:

Review of Avondale Mills, Incorporated's Rates	)	
Approved in Order No. 2009-394	)	<b>CERTIFICATE OF</b>
	)	<b>SERVICE</b>
	)	

This is to certify that I, Chrystal L. Morgan, have this date served one (1) copy of the **PROPOSED ORDER** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Scott Elliott, Esquire  
Elliott & Elliott, P.A.  
721 Olive Street  
Columbia, SC, 29205

Joe A. Taylor  
105 Laurel Drive  
Graniteville, SC, 29829

Michael Hunt  
509 Laurel Drive  
Graniteville, SC, 29829

  
\_\_\_\_\_  
Chrystal L. Morgan

November 13, 2009  
Columbia, South Carolina